

Jordan



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Westinghouse Furniture Systems

File: B-241647; B-241648; B-241649; B-241650

Date: February 7, 1991

Marsha Goodman, Esq., for the protester.
Joel R. Feidelman, Esq., and Terry E. Miller, Esq., Fried,
Frank, Harris, Shriver & Jacobson, for Herman Miller, Inc., an
interested party.
Lynn P. Kentfield, Immigration and Naturalization Service,
Department of Justice, for the agency.
Paul E. Jordan, Esq., and John F. Mitchell, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

1. Since quotations from Federal Supply Schedule (FSS) vendors are informational responses and there is no requirement that the quotation comply precisely with the request for quotation requirements, where the awardee meets agency's minimum needs and the price impact of apparent omissions had no effect on competitive standing of vendors, protests of FSS vendor's failure to include certain items are denied.
2. Protest of unspecified "omissions of required provisions and ambiguous and indefinite evaluation factors" are dismissed as inadequately detailed and untimely when not raised prior to closing date for receipt of quotations.

DECISION

Westinghouse Furniture Systems, a division of Westinghouse Electric Corporation, protests the issuance of delivery orders to Herman Miller, Inc. under request for quotations (RFQ) Nos. WRO 28-Q-90, WRO 33-Q-90, SRO 34-Q-90, and NRO 35-Q-90, issued by the Immigration and Naturalization Service (INS), Department of Justice. The orders were placed against Herman Miller's mandatory Federal Supply Schedule (FSS) contract with the General Services Administration (GSA) for systems furniture. Westinghouse, another FSS contractor, submitted the next low quotes. The protester contends that the

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awardee's quotations must have omitted required items and that the evaluation therefore was flawed.

We deny the protests in part and dismiss them in part.

The systems furniture to be procured under these RFQs is for requirements at the INS's four regional service centers in Vermont, California, Texas, and Nebraska. Each RFQ included a set of drawings of workstation "typicals," designed by the agency, on which the offerors were to base their solutions. Estimated quantities of each workstation were provided and FSS vendors were allowed to offer additional discounts from their GSA list prices. In addition to product prices, offerors were to furnish fixed prices for design and installation. Each proposal was then to be evaluated against the RFQ requirements for responsiveness; product, design, and installation costs totaled; and total costs multiplied by a GSA established technical score to reach a weighted price. Award was to be made to the offeror proposing the lowest overall weighted prices.

Of the 35 vendors which were furnished the 4 RFQs, 5, including Westinghouse and Herman Miller, responded with submittals. Both Westinghouse and Herman Miller were found responsive to the agency's requirements and both have the same GSA technical score. Since the evaluation of prices established that for all four RFQs Herman Miller's prices were lower than those of Westinghouse, the contracting officer made four awards to Herman Miller. After receiving notification of the awards, Westinghouse filed its protests with our Office.^{1/}

Based on prior competitions with Herman Miller, in which Westinghouse had lower prices, Westinghouse contends that

^{1/} The agency and Herman Miller argue that Westinghouse's protests are untimely because it did not file its protests within 10 working days after learning its protest bases, as required by 4 C.F.R. § 21.2(a)(2) (1990). There is, however, correspondence from Westinghouse to INS, all dated within 10 working days of award, in which the protester sought information regarding its belief that INS had not conducted a thorough evaluation and that the selection of Herman Miller therefore was in error. When the agency's October 9 response indicated that it would not provide further information or conduct a reevaluation, Westinghouse filed its protests with our Office. While this represents a close case, we conclude that Westinghouse's earlier correspondence could be construed as an agency-level protest, and its protests here were filed within 10 working days of the agency's denial. Hence, the protests are timely. 4 C.F.R. § 21.2(a)(3).

Herman Miller's low prices could only result from an omission of important parts and pieces critical to the project. Specifically, Westinghouse alleges that Herman Miller omitted required paper management items, and that it may have based its prices upon a panel sharing factor.^{2/} It thus concludes that the submittals could not have been evaluated properly and result in awards to Herman Miller.^{3/}

Federal agencies must procure from multiple award FSS's at the lowest price consistent with their minimum needs. Dictaphone Corp., B-228241, Dec. 23, 1987, 87-2 CPD ¶ 619. The determination of the minimum needs of an agency and which products on the FSS meet these needs is properly the responsibility of the procuring activity. Herman Miller, Inc., B-232839, Jan. 26, 1989, 89-1 CPD ¶ 79. Further, since quotations from FSS vendors are not offers but merely informational responses which the government may use to issue a delivery order to an FSS contractor, there is no requirement that the quotation comply precisely with the RFQ requirements. Id.

We have reviewed the technical requirements listed in the RFQ and the offerors' price submittals, including the parts list for each typical. While there is no evidence that Herman Miller used a panel sharing factor to enhance its competitive position, the parts lists submitted by Westinghouse and Herman Miller do not exactly correspond with one another. To the extent the differences may represent a failure by Herman Miller to list all required items, we do not find that Westinghouse was prejudiced. For example, for the eastern region, RFQ WRO 28-Q-90, Herman Miller did not list a required

2/ "Paper management items" include such accessories as shelf and drawer dividers. A "panel sharing factor" represents a method of reducing prices by sharing panels among different adjacent workstations. The RFQ prohibited such factors, requiring instead that each workstation be complete in and of itself.

3/ In support of this position, Westinghouse asserted that INS must not have thoroughly reviewed the submittals because a computational error in Westinghouse's price was not "detected." In response, INS advises that all offerors' price quotations were checked for accuracy as part of the price evaluation and that the error to which Westinghouse refers was corrected by the contracting officer, as an obvious clerical mistake, without contacting Westinghouse. While the correction lowered Westinghouse's price for the item in question, its overall price was still higher than Herman Miller's and the error had no effect on the outcome of the competition.

task light for one of the workstation typicals, an item with a list price of \$140. This item was to be included in up to 14 workstations, for a total list price of \$1,960. Since the total list price difference between these two offerors for this RFQ was \$247,583.50, had Herman Miller included this item, the outcome of the RFQ would have been the same.^{4/}

We also note that while Westinghouse separately listed coat hooks and paper management items, Herman Miller's parts lists did not separately list these items. Assuming, for the sake of argument, that these items were not included in the cost of other items, e.g., drawer or cabinet units or other listed part kits, their value by no means approaches the price difference between the two offerors. For example, the Westinghouse list price for coat hooks is \$9.50 each; drawer dividers are \$9.00 each; and a box of 6 shelf dividers is \$99.00 each. The total of these items in the Eastern region RFQ is \$35,602.50 for the 298 estimated workstations. Again, in view of the \$247,583.50 difference in list prices, had this figure been deducted from Westinghouse's prices, its prices still would exceed those of Herman Miller. Thus, we find that Westinghouse was not prejudiced.

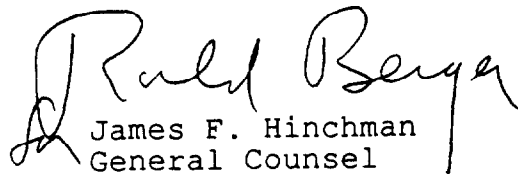
Our review of the other three RFQs produced similar results. The amount attributable to any items which may have been omitted by Herman Miller are insignificant in comparison with the difference in the two offerors' prices. This is equally true when the offerors' discounts are taken, design and installation prices are included, and the technical scores are applied. In any event, since the agency is satisfied that Herman Miller will meet its minimum needs and since such quotations are informational responses, which need not comply precisely with the RFQ requirements (Herman Miller, Inc., B-232839, supra), any apparent minor omissions by the awardee do not provide a basis for sustaining Westinghouse's protests.

Finally, in its initial correspondence, Westinghouse also protested, without further explanation, "apparent omissions of required provisions and ambiguous and indefinite evaluation factors." This is not an adequately "detailed statement of the legal and factual grounds of protest" as required by our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4). In addition, our Bid Protest Regulations require that a protest based upon

^{4/} In this regard, we note that Westinghouse similarly failed to list required items--such as tackboards--on some of its parts lists. For example, the eastern region RFQ required two tackboards in each of three of the eight typical workstations. The government estimated a quantity of 117 of these workstations, resulting in a total of 234 missing tackboards.

alleged improprieties in a solicitation, apparent prior to the closing date for receipt of initial proposals, be filed prior to that closing date. 4 C.F.R. § 21.2(a)(1). Since Westinghouse did not file its protests until after the closing date for receipt of quotations, these allegations are untimely.

The protests are denied in part and dismissed in part.


James F. Hinchman
General Counsel